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9

10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**
12 **SAN FRANCISCO DIVISION**

13 ASETEK DANMARK A/S,
14 Plaintiff and
Counterdefendant,
15 ASETEK USA, INC.,
16 Counterdefendant,
17

18 v.

19 COOLIT SYSTEMS, INC.,
20 Defendant and
Counterclaimant,
21 COOLIT SYSTEMS USA INC., COOLIT
22 SYSTEMS ASIA PACIFIC LIMITED,
COOLIT SYSTEMS (SHENZHEN) CO.,
23 LTD.,
24 Defendants,
25 CORSAIR GAMING, INC. and CORSAIR
MEMORY, INC.,
26 Defendants.
27
28

CASE NO. 3:19-cv-00410-EMC

**ASETEK DANMARK A/S'S AND ASETEK
USA, INC.'S REPLY IN SUPPORT OF
THEIR MOTION TO EXCLUDE OPINIONS
OF MR. JOHN L. HANSEN CONCERNING
COOLIT'S DAMAGES**

Date: May 5, 2022
Time: 1:30 PM
Location: Courtroom 5, 17th Floor
Judge: Hon. Edward M. Chen

**REDACTED VERSION
FOR PUBLIC FILING**

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	ARGUMENT	2
A.	Mr. Hansen’s Damages Analysis Fails to Account for Apportionment and CoolIT Cannot Fix the Deficiencies in His Report Through Attorney Argument	2
1.	Mr. Hansen’s Report fails to provide any analysis of whether and to what extent the Asetek-Corsair license included any apportionment.	2
2.	Conclusory testimony on technical comparability cannot substitute for apportionment.	4
3.	CoolIT’s description of the scope of the CoolIT and Asetek patents is misleading and irrelevant because CoolIT cannot dispute that Asetek’s patents cover an entire liquid cooling system, and CoolIT’s asserted claims cover only one component.....	7
4.	The cases relied on by CoolIT for exceptions to the general principle against using the entire market value of the accused product are inapposite.	10
5.	CoolIT ignores the Federal Circuit’s recognition that damages analyses based on the entire market value of an accused product can lead to improper damages awards by juries.....	12
B.	Mr. Hansen’s Royalty Base Improperly Includes a Portion of Overseas Sales to Corsair and He Did Not Ask Corsair for Data to Support His Analysis, Which Data Corsair Has	13
C.	CoolIT Cannot Overcome the Statutory Limitation on Damages by Relying on the Relation Back Doctrine	14
III.	CONCLUSION.....	15

TABLE OF AUTHORITIES**Page(s)****Cases**

<i>Asetek Danmark A/S v. CMI USA, et al</i> , Case No. 3:13-cv-00457-JST, Dkt. 219.....	10
<i>Bio-Rad Lab'ys, Inc. v. 10X Genomics Inc.</i> , 967 F.3d 1353 (Fed. Cir. 2020).....	11, 12
<i>Bio-Rad Lab'ys, Inc. v. 10X Genomics, Inc.</i> , Case No. CV 15-152-RGA, 2018 WL 4691047 (D. Del. Sept. 28, 2018).....	11
<i>Commonwealth Scientific & Industrial Research Organisation v. Cisco Systems, Inc.</i> , 809 F.3d 1295 (Fed. Cir. 2015).....	10, 11
<i>Elbit Sys. Land & C4I Ltd. v. Hughes Network Sys., LLC</i> , 927 F.3d 1292 (Fed. Cir. 2019).....	11
<i>Exmark Manufacturing Co. v. Briggs & Stratton Power Products Group, LLC</i> , 879 F.3d 1332 (Fed. Cir. 2018).....	10
<i>GPNE Corp. v. Apple, Inc.</i> , Case No. 12-CV-02885-LHK, 2014 WL 1494247 (N.D. Cal. Apr. 16, 2014).....	6
<i>Krupski v. Costa Crociere S.p.A.</i> , 560 U.S. 538 (2010).....	14, 15
<i>LaserDynamics, Inc. v. Quanta Comput., Inc.</i> , 694 F.3d 51 (Fed. Cir. 2012).....	<i>passim</i>
<i>NetFuel, Inc. v. Cisco Sys. Inc.</i> , Case No. 18-CV-02352-EJD, 2020 WL 1274985 (N.D. Cal. Mar. 17, 2020).....	6
<i>ResQNet.com, Inc. v. Lansa, Inc.</i> , 594 F.3d 860 (Fed. Cir. 2010).....	5
<i>SMIC, Americas v. Innovative Foundry Techs. LLC</i> , 473 F. Supp. 3d 1021 (N.D. Cal. 2020)	15
<i>Uniloc USA, Inc. v. Microsoft Corp.</i> , 632 F.3d 1292 (Fed. Cir. 2011).....	12
<i>Vectura Ltd. v. Glaxosmithkline LLC</i> , 981 F.3d 1030 (Fed. Cir. 2020).....	11, 12
<i>Virnetx, Inc. v. Cisco Sys., Inc.</i> , 767 F.3d 1308 (Fed. Cir. 2014).....	12, 13

Other Authorities

Fed. R. Civ. P 15(c)(1)(C)(ii).....14, 15

1 I. INTRODUCTION

2 The Court has an obligation to ensure that only reliable damages theories that meet the
 3 Federal Circuit’s settled principles of apportionment are allowed to reach the jury. CoolIT and Mr.
 4 Hansen both acknowledge that CoolIT’s damages analysis requires apportionment because the
 5 asserted CoolIT patent claims cover just one component of a multicomponent device. It is
 6 undisputed that Mr. Hansen did not apply apportionment in his selection of the royalty base. He
 7 could have formed a royalty base using the smallest saleable patent practicing unit—as the Federal
 8 Circuit has often recommended—but did not. Mr. Hansen did not apply a low royalty rate to offset
 9 his use of the entire value of the accused products either. Mr. Hansen applied his maximum royalty
 10 rate from the Asetek-Corsair license to the full amount of revenue received by Asetek for sales of the
 11 accused liquid cooling products without ever addressing apportionment.

12 It its opposition, CoolIT attempts to justify Mr. Hansen’s failure to apportion damages with
 13 unsupported attorney argument that the apportionment job was already done for him by the Asetek-
 14 Corsair license. But CoolIT’s attorney argument cannot save Mr. Hansen’s fundamentally flawed
 15 analysis. Critically, Mr. Hansen did not discuss apportionment in the Asetek-Corsair license. He did
 16 not discuss “built-in apportionment” in his report at all. CoolIT’s technical expert did not weigh in
 17 on apportionment in the Asetek-Corsair license either; he did not even review the license.

18 CoolIT’s “built-in apportionment” attorney argument also depends on the Asetek-Corsair
 19 license being technically comparable, which CoolIT’s experts purport to address in only the most
 20 conclusory and superficial fashion. Neither Mr. Hansen nor Dr. Abraham offered anything on
 21 technical comparability other than that the Asetek Cooling Patents are supposedly “directed towards
 22 solving similar problems for similar products as the CoolIT Patents-In-Suit.” Nothing more.

23 CoolIT’s opposition also seeks to mislead the Court about the scope of the remaining
 24 asserted CoolIT patent claims. CoolIT argues that the CoolIT patents are not limited to the cold plate
 25 (citing to the specification and figures of CoolIT’s ’266 patent), but none of the claims of the ’266
 26 patent reciting a “fluid heat exchange system” survived the PTAB. CoolIT’s remaining asserted
 27 claims recite only a “fluid heat exchanger.” For this motion, what matters is that CoolIT’s asserted
 28 claims do not cover a complete cooling system, unlike the claims in Asetek’s licensed patents.

While the Federal Circuit has allowed some flexibility in damages analyses, the Court should not allow CoolIT to circumvent the long-standing, well-established apportionment requirements through insufficient, conclusory expert testimony and pure attorney argument.

II. ARGUMENT

A. Mr. Hansen’s Damages Analysis Fails to Account for Apportionment and CoolIT Cannot Fix the Deficiencies in His Report Through Attorney Argument

CoolIT’s opposition reveals three key undisputed facts. One, CoolIT does not dispute that its expert was required to perform some form of apportionment in determining reasonable royalty damages. Two, CoolIT does not dispute that its expert failed to conduct *any* apportionment with respect to the royalty base. And three, CoolIT does not argue that Mr. Hansen himself performed *any* apportionment when determining a royalty rate. CoolIT argues instead that Mr. Hansen can simply rely on supposed “built-in apportionment” in a license to different patents having different claim scope. This argument, however, is an invention of CoolIT’s attorneys, has no support in Mr. Hansen’s report, it is contradicted by the actual scope of CoolIT’s asserted patent claims, and is contrary to Federal Circuit precedent. Thus, it should be excluded.

1. Mr. Hansen’s Report fails to provide any analysis of whether and to what extent the Asetek-Corsair license included any apportionment.

As noted above, CoolIT’s opposition argues that the Asetek-Corsair license included “built-in apportionment” and that Mr. Hansen relied on the supposed “built-in apportionment” to ensure his damages calculations were properly apportioned. But this is just attorney argument. It has no support in Mr. Hansen’s report. In his report, Mr. Hansen never mentions the concept of “built-in apportionment” *at all*, let alone in the context of the Asetek-Corsair license. *See* Dkt. 404-5. He offers *no* analysis of any such apportionment. *Id.* In fact, the word “apportion” does not appear anywhere in Mr. Hansen’s discussion of the Asetek-Corsair license. *See Id.* at ¶¶ 63-80. Mr. Hansen only discusses apportionment under his *Georgia-Pacific* factor 13, at the conclusion of which he found “[REDACTED]” *Id.*, ¶¶ 81-93. He then proceeds to overrule his own analysis in pursuit of a higher royalty for CoolIT.

1 Furthermore, Mr. Hansen never explains why any apportionment in the Asetek-Corsair
 2 license for Asetek's patents would apply equally to CoolIT's patents. *See* Dkt. 404-5. Asetek's
 3 patents claim an entire liquid cooling system; CoolIT's asserted patent claims cover only one
 4 component of that system. *See* Section II.A.3, below. To the extent there was any "built-in
 5 apportionment" in the Asetek-Corsair license, it was based on the value of the entire Asetek system.
 6 Mr. Hansen's report contains no explanation or economic analysis regarding why apportionment for
 7 a single component would be the same. *See* Dkt. 404-5.

8 Faced with this lack of analysis, CoolIT's attorneys attempt to fill in the gaps themselves.
 9 But attorney argument cannot resuscitate a defective expert opinion. For example, CoolIT argues
 10 that the Asetek-Corsair License must be apportioned because otherwise "the royalty rate would have
 11 been closer to 100%." Dkt. 417-3 at 8. This is absurd on its face as licenses that satisfy the entire
 12 market value rule exist without applying a 100% royalty. Importantly, this is not an opinion
 13 expressed by CoolIT's experts, but attorney argument appearing only in CoolIT's opposition.

14 Similarly, CoolIT invents a supposed comparison made by Mr. Hansen of the technology in
 15 Asetek's patents with that in CoolIT's patents by pointing to a section of his report that purportedly
 16 included such comparison. Dkt. 417-3 at 10-11. But no such comparison exists. All but one of the
 17 paragraphs cited make no mention of Asetek's patents. *See* Dkt. 404-5, ¶¶ 47-53, 70. Rather, the
 18 paragraphs are a discussion of the supposed "benefits" of the CoolIT patents. *Id.* And the only
 19 paragraph that does mention Asetek's patents states only that they "are directed towards solving
 20 similar problems for similar products as the CoolIT Patents-In-Suit" without any further explanation.
 21 *Id.*, ¶ 70. This statement is baseless, as explained below.

22 CoolIT implies that Mr. Hansen determined that the royalty in the Asetek-Corsair license
 23 reflected the "incremental value" of Asetek's patents. Dkt. 417-3 at 10. Mr. Hansen did not offer any
 24 such opinion and never mentions the "incremental value" of Asetek's patents in his report. *See*
 25 Dkt. 404-5. Nor does he purport to have analyzed the Asetek's patents. *Id.* In his deposition, [REDACTED]

26 [REDACTED]
 27 [REDACTED] Ex. A at 174:24-175:15 [REDACTED]
 28 [REDACTED]

1 [REDACTED]
 2 [REDACTED]. This phantom “incremental value” is just more attorney argument.

3 **2. Conclusory testimony on technical comparability cannot substitute**
 4 **for apportionment.**

5 Because Mr. Hansen performed no apportionment analysis, in its opposition, CoolIT argues
 6 that the comparability of the Asetek-Corsair license to the hypothetical negotiation permits CoolIT
 7 to simply adopt whatever apportionment was performed in that license. But again, Mr. Hansen’s
 8 report fails to support CoolIT’s attorney’s argument for multiple reasons.

9 First, Mr. Hansen’s analysis of the technical comparability of the Asetek patents to the
 10 CoolIT patents consists of a single paragraph in his report that relies entirely on an off-the-record
 11 conversation with Dr. Abraham, CoolIT’s other paid expert. Specifically, Mr. Hansen relies on Dr.
 12 Abraham’s alleged statement that “the Asetek Cooling Patents are directed towards solving similar
 13 problems for similar products as the CoolIT Patents-In-Suit...” *Id.*, ¶ 70. And nothing else. That is
 14 insufficient under Federal Circuit law, as discussed in more detail below. *LaserDynamics, Inc. v.*
 15 *Quanta Comput., Inc.*, 694 F.3d 51, 79 (Fed. Cir. 2012) (noting “loose or vague comparability
 16 between different technologies or licenses does not suffice.”). Significantly, Dr. Abraham did not tell
 17 Mr. Hansen that the Asetek-Corsair license was for technology comparable to that claimed in the
 18 asserted claims of the CoolIT patents; Dr. Abraham admitted in deposition that he had never even
 19 seen the Asetek-Corsair license, much less discuss the license with Mr. Hansen or opine on its scope.
 20 Ex. B at 17:9-19:6 (“Q. Do you -- do you recall having any communication with Mr. Hansen
 21 regarding license agreement? A. I don’t specifically recall that conversation. Q. Have you ever seen
 22 a license agreement between Asetek and Corsair? A. I do not recall seeing one.”).

23 Second, the comparability statement on which Mr. Hansen relies is not expressed in Dr.
 24 Abraham’s lengthy report. *See* Dkt. 396. In fact, Dr. Abraham’s expert report emphasizes the
 25 *differences* between the Asetek and CoolIT patents. Dkt. 396, ¶¶ 744-749. Specifically, Dr. Abraham
 26 opined that the Asetek patents “have fundamental differences” from the CoolIT patents (*Id.*, ¶ 745)
 27 and that there are “clear differences” between them (*Id.*, ¶ 746). In his deposition, when describing
 28 his conversation with Mr. Hansen, Dr. Abraham explained “I remember talking to Mr. Hansen about

1 how the devices worked, and *in particular, the differences between the Asetek patents and the*
 2 *CoolIT patents.*” Ex. C at 62:22-63:1 (emphasis added). The apparent opinion of Dr. Abraham that
 3 the patents are technically comparable is not an opinion Dr. Abraham has offered to present at trial.
 4 Rather, based on his report he instead will testify that there are “fundamental differences” between
 5 the Asetek and CoolIT patents. Dkt. 396, ¶¶ 745-746.

6 Third, Dr. Abraham himself has no support for the comparability statement. Specifically,
 7 when asked at his deposition about his conversation with Mr. Hansen concerning comparability, Dr.
 8 Abraham could provide no information other than the exact words that appear in Hansen’s report.
 9 Ex. B at 134:14-18 (“Did you tell Mr. Hansen that the Asetek patents are technically comparable to
 10 the CoolIT patents? A. What I told Mr. Hansen is captured by these two paragraphs that we have
 11 been discussing.”); *see also id.* at 130:24-138:3. Dr. Abraham repeatedly noted that he did not
 12 provide a comparability opinion in his own reports. *Id.* at 134:5-7, 137:2-6, 137:20-138:3, 142:7-18.
 13 Dr. Abraham said he is not offering an opinion on comparability. *Id.* at 141:3-8 (“THE WITNESS: I
 14 am not--did--did I offer an opinion on technical comparability in my report? Q. No, you did not. A.
 15 Okay. I’m not offering that opinion.”). And Dr. Abraham ultimately admitted—after repeatedly
 16 attempting to dodge the question for an hour—that the only basis for his opinion that the Asetek and
 17 CoolIT patents are technically comparable is that they are directed to solving similar problems for
 18 similar products. *Id.* at 163:2-164:11 (“I just want to compare the claims and ask -- and ask you,
 19 aside from the fact that the Asetek Asserted claims and the CoolIT Asserted claims are directed
 20 towards solving similar problems for similar products, do you have any other basis for your opinion
 21 that the Asserted Asetek claims and the Asserted CoolIT claims are technically comparable? A.
 22 Well, I mean that is my basis.”); *see also id.* at 130:24-164:11.

23 Fourth, technical comparability requires something more than simply “solving similar
 24 problems for similar products.” Under that analysis a simple fan would be technically comparable to
 25 the cooling systems at issue in this case. In fact, this type of minimal comparability analysis is
 26 exactly what the Federal Circuit precluded in the two seminal decisions cited in Asetek’s motion.
 27 *LaserDynamics*, 694 F.3d at 79-80; *ResQNet.com, Inc. v. Lansa, Inc.*, 594 F.3d 860, 869, 873 (Fed.
 28 Cir. 2010) (vacating damages award and commenting that “district courts performing reasonable

royalty calculations [must] exercise vigilance when considering past licenses to technologies other than the patent in suit.”). Notably, CoolIT does not mention or even attempt to distinguish *ResQNet* or *LaserDynamics* in its opposition.

Fifth, Dr. Abraham is not qualified to offer any economic opinions or comparison on the relative economic value of the Asetek and CoolIT patents, and no facts or data have been cited in support of the proposition that CoolIT’s patents are supposedly “more valuable.” *See* Dkt. 404-3, Section II.D.2. As mentioned, Dr. Abraham never even saw the Asetek-Corsair license. Ex. B at 17:9-19:6 Moreover, Dr. Abraham based his valuation opinion only on his own “experience,” and did not speak to any customers—including Corsair—concerning the relative value of the Asetek and CoolIT patents. Dkt. 405-9 at 113:4-22; Dkt. 405-10 at 176:16-178:7. This complete lack of support makes Mr. Hansen’s alleged reliance on the Asetek-Corsair license to do his work for him unreliable. And as explained previously, there is no evidence that Mr. Hansen relied on any alleged “built-in” apportionment; that is unsupported attorney argument in CoolIT’s opposition.

Finally, Mr. Hansen’s failure to do any actual analysis of technical comparability cannot be solved through cross-examination as CoolIT argues. While some cases have found comparability can be addressed on cross examination, at a minimum, there must be sufficient explanation and analysis in the expert’s report to understand the basis of the opinion. *See NetFuel, Inc. v. Cisco Sys. Inc.*, Case No. 18-CV-02352-EJD, 2020 WL 1274985, at *7 (N.D. Cal. Mar. 17, 2020) (striking damages opinion where technical expert provided no methodology on valuation); *see also GPNE Corp. v. Apple, Inc.*, Case No. 12-CV-02885-LHK, 2014 WL 1494247, at *6 (N.D. Cal. Apr. 16, 2014) (“Without a methodology . . . cross-examination is futile.”). Otherwise, a damages expert could always avoid exclusion through a conclusory statement of comparability in his/her report. Here,

Ex. A at 174:24-175:15. Dr.

Abraham has not explained it either. While it may be permissible to allow the jury to decide the issue of comparability in some cases, here CoolIT and Mr. Hansen have provided no facts or data, just “loose or vague comparability” on which the jury cannot rely. *See LaserDynamics*, 694 F.3d at 79-80.

1 **3. CoolIT’s description of the scope of the CoolIT and Asetek patents**
 2 **is misleading and irrelevant because CoolIT cannot dispute that**
 3 **Asetek’s patents cover an entire liquid cooling system, and**
 4 **CoolIT’s asserted claims cover only one component.**

5 Because Mr. Hansen failed to explain his understanding of the scope of the CoolIT and
 6 Asetek patents or how the relative scope of those patents justifies his failure to perform any
 7 apportionment, CoolIT attempts in its opposition to fill the gap with attorney argument concerning
 8 the scope of those patents. But the asserted patent claims are unambiguous. CoolIT’s remaining
 9 asserted patent claims cover only a “fluid heat exchanger.” The Asetek patent claims licensed in the
 10 Asetek-Corsair license cover a “liquid cooling system.” Mr. Hansen did not discuss or account for
 11 these differences or explain how a royalty appropriate for a complete cooling system would include
 12 the same “built-in apportionment” as a royalty for a mere component of that same system.

13 **a. CoolIT’s asserted patent claims cover a “fluid heat**
 14 **exchanger.”**

15 In its opposition brief, CoolIT states that the “CoolIT Patents are not limited to the cold plate
 16 piece of the larger inventive liquid cooling system.” Dkt. 417-3 at 2. CoolIT’s description of its
 17 “patents” is misleading. Chiefly, CoolIT ignores that the scope of the invention is defined by the
 18 language of the claims, not the specification. As explained in Asetek’s motion, at this juncture, all of
 19 CoolIT’s remaining asserted claims are directed to a “fluid heat exchanger,” not a liquid cooling
 20 system that includes a fluid heat exchanger. *See* Dkt. 405-2, ¶¶ 15-16.¹ The fluid heat exchanger is
 21 primarily comprised of the cold plate, and CoolIT’s experts used the cold plate as the smallest
 22 saleable patent practicing unit. *See* Dkt. 404-5, ¶ 84.

23 Rather than focus on the asserted claims of its patents, CoolIT focuses instead on the title,
 24 figures, and specification of just one patent—the ’266 patent—to describe CoolIT’s patents
 25 collectively, but does not inform the Court that the ’266 patent is a continuation-in-part that includes

26 ¹CoolIT previously asserted claims 1, 2, 4, 5, and 9 of the ’266 patent, which recite “A heat
 27 exchange system,” but each of those claims was determined to be unpatentable by the PTAB in IPR
 28 No. IPR2020-00825. Dkt. 405-2, ¶¶ 15-16. In addition, CoolIT previously asserted claims 1, 2, 3, 5,
 29 7, 25, and 28 of CoolIT’s U.S. Patent No. 9,057,567, each of which recite “A heat exchange
 30 system,” but each of those claims was determined to be unpatentable in IPR No. IPR2020-00747. *Id.*

disclosures not in CoolIT's other asserted patents.² Specifically, CoolIT's other two patents (the '330 and '284 patents) claim priority only to a provisional application filed on August 9, 2007 ("the 2007 Provisional," Dkt. 394-6). The 2007 Provisional is titled "Fluid Heat Exchanger" and includes only figures and descriptions of a fluid heat exchanger, not a heat exchange system. Dkt. 394-6. The term "heat exchange system" does not appear anywhere in the '330 or '284 patents. *See* Dkts. 23-1, 23-2.

Four years later, CoolIT filed a different provisional application on July 27, 2011 ("the 2011 Provisional," Dkt. 394-7). Unlike the 2007 Provisional, the 2011 Provisional related to "Heat Exchange Systems" more broadly. Dkt. 394-7. CoolIT's '266 patent claims priority to the 2011 Provisional, but as explained above, the only claims of the '266 that remain valid and asserted in this case today are limited to the "fluid heat exchanger." CoolIT's technical expert applied the 2007 priority date for claims 13 and 15 of the '266 patent. Dkt. 394-3 at 52:15-53:5.³ Thus, CoolIT's reliance on the '266 patent/2011 Provisional to try to expand what its claims cover is wrong.

Moreover, during claim construction, the Court rejected CoolIT's argument that the "fluid heat exchanger included a pump and covered a whole cooling system, and instead construed the term "fluid heat exchanger" to mean "component that transfers heat from a heat source to a cooling liquid circulated by a pump that is external to the component." Dkt. 149 at 21-25. That is all the asserted claims cover.

While CoolIT's reliance on the '266 patent disclosure to describe all of its patents collectively is incorrect, CoolIT appears to concede that none of the remaining asserted patent claims cover a complete liquid cooling device, which is the relevant point for Asetek's motion.

b. Asetek's patents cover a "liquid cooling system."

Unlike CoolIT's asserted patent claims, which cover only a fluid heat exchanger, Asetek's patents and asserted claims cover a complete liquid cooling system. Asetek's heat exchanging

² CoolIT's expert Dr. Abraham also described in his expert report features of the CoolIT patents that allegedly would affect demand for the CoolIT patents, but his report cited to parts of the specification of CoolIT's now-invalidated '567 patent for support. *See, e.g.* Dkt. 418-2, ¶¶ 750-759.

³ If CoolIT's expert had instead relied on the 2011 Provisional to expand the claim scope, the priority date would be in 2011 and claims 13 and 15 of the '266 patent would be invalid. *See* Dkt. 390-12, ¶ 69

1 interface is just one of many components recited. For example, Claim 17 of Asetek's '362 patent
2 recites the following:

3 17. A method of operating a liquid cooling system for an electronic component
4 positioned on a motherboard of a computer system, comprising:

5 separably thermally coupling **a heat exchanging interface** of a reservoir with the
6 electronic component positioned at a first location on the motherboard, the
7 reservoir including an upper chamber and a lower chamber, the upper chamber
8 and the lower chamber being separate chambers that are vertically spaced apart
9 and separated by at least a horizontal wall, the upper chamber and the lower
10 chamber being fluidly coupled by one or more passageways, at least one of the
11 one or more passageways being positioned on the horizontal wall, **the heat
exchanging interface being removably coupled to the reservoir such that an
inside surface of the heat exchanging interface is exposed to the lower
chamber of the reservoir;**

12 positioning a heat radiator at a second location horizontally spaced apart from the
13 first location, the heat radiator and the reservoir being fluidly coupled together by
14 tubing that extends from the first location to the second location;

15 activating a pump to a circulate a cooling liquid through the reservoir and the heat
16 radiator, the pump including a motor and an impeller having curved blades, the
17 impeller being positioned in the reservoir; and

18 activating a fan to direct air through the heat radiator, the fan being operated by a
19 motor separate from the motor of the pump.

20 Dkt. 405-4 at claim 17. The portions in bold above are the heat exchanging interface elements that
21 somewhat correspond to the "fluid heat exchanger" of CoolIT's claims. The rest of the Asetek claim
22 elements relate to other things.

23 CoolIT attempts to minimize the invention of the Asetek patents by mischaracterizing the
24 jury verdict in the previous litigation between Asetek and Cooler Master. CoolIT argues that "the
25 only difference that the jury found to exist . . . was the limitation of the reservoir to be a single
26 receptacle" (Dkt. 417-3 at 4), but that is not the case. The jury's complete finding was as follows:

27 Asetek's patented invention is directed to a closed loop liquid cooling system in
28 which cooling liquid is pumped continuously between a pump head and a heat
radiator (positioned remote from the pump head). **Rather than connecting
together multiple separate components (as in the prior art), Asetek's
patented pump head design combines, into a single unit, a pump and the
claimed "reservoir" that has, among other things, dual chambers and is
bounded by a removable cold plate.** Also, the claimed "reservoir" in Asetek's
invention is a single receptacle that is divided into an upper chamber and a lower
chamber, with the upper chamber providing the pumping function and the lower
chamber providing the thermal exchange function. In addition to providing
efficient heat removal, Asetek's patented invention includes at least one of the

1 following benefits over each example of prior art: a compact (narrow) profile,
2 cost-effective manufacturing, and reduced risk of fluid leakage.

3 *Asetek Danmark A/S v. CMI USA, et al*, Case No. 3:13-cv-00457-JST, Dkt. 219 at 3-4 (emphasis
4 added). The jury also found evidence of commercial success due to the Asetek invention, long-felt
5 need for the solution provided by Asetek's patents, unsuccessful attempts by others to find the
6 Asetek solution, copying of the invention by others, unexpected and superior results from the
7 invention, and praise from others in the field. *Id.* at 4. CoolIT's attempt to diminish the scope of the
8 Asetek patents based on the previous jury verdict is incorrect.

9 **4. The cases relied on by CoolIT for exceptions to the general
10 principle against using the entire market value of the accused
11 product are inapposite.**

12 CoolIT's attempts to analogize this case to the few cases where the Federal Circuit has found
13 exceptions to the general principle that the entire market value should not be used are unsuccessful.
14 None of the cases cited by CoolIT permits or justifies Mr. Hansen's unreliable approach here.

15 For example, the principal case relied on by CoolIT is *Exmark Manufacturing Co. v. Briggs*
16 *& Stratton Power Products Group, LLC*, 879 F.3d 1332 (Fed. Cir. 2018). But that case involved
17 very different circumstances than the present case. In *Exmark*, the accused product was a
18 lawnmower and the asserted patent claims covered an entire lawnmower. Indeed, this was an
19 important factor in the Federal Circuit's analysis:

20 Using the accused lawn mower sales as the royalty base is particularly appropriate
21 in this case because the asserted claim is, in fact, directed to the lawn mower as a
22 whole. . . It is not the baffle that infringes the claim, but rather the entire accused
23 mower. Thus, **claim 1 covers the infringing product as [a] whole, not a single
24 component of a multi-component product.**

25 *Id.* at 1348 (emphasis added and internal citations omitted). This is the opposite of the situation here.
26 CoolIT's asserted patent claims cover only one component, and *do not* cover the entire product.

27 Similarly, in *Commonwealth Scientific & Industrial Research Organisation v. Cisco Systems,*
28 *Inc.*, 809 F.3d 1295 (Fed. Cir. 2015) ("*CSIRO*"), the Federal Circuit affirmed that "the smallest
salable patent-practicing unit principle provides that, where a damages model apportions from a
royalty base, the model should use the smallest salable patent-practicing unit as the base." *Id.* (citing
LaserDynamics, 694 F.3d at 67). However, the Court found that that accepted principle did not apply
in *CSIRO* because the damages were based on the parties' actual negotiations for a license to the

1 asserted patent. The accused infringer, Cisco, had informally proposed a royalty for the asserted
 2 patent, and that amount was used as the lower bound for the reasonable royalty analysis. The Court
 3 commented that “[b]ecause the parties’ discussions centered on a license rate for the [same] patent,
 4 this starting point for the district court’s analysis already built in apportionment.” *Id.* at 1303. (This
 5 is the factual setup from which the “built-in apportionment” cases CoolIT relies on was derived.)
 6 The facts that warranted deviation from the smallest saleable unit principle in *CSIRO* are not present
 7 in this case. Asetek and CoolIT have never negotiated a license to the CoolIT patents. In fact, *no one*
 8 has ever negotiated a license to the CoolIT patents. Dkt. 403-5 at 157:2-24. *CSIRO* is inapposite.

9 The other cases relied upon by CoolIT fare no better because in those cases the experts
 10 performed the analysis that Mr. Hansen did not. For example, in *Elbit*, the expert explicitly testified
 11 that apportionment “is essentially embedded in [the] comparable value” and also relied on testimony
 12 from the accused infringers on the increased value of the new system over the old system. *Elbit Sys.*
 13 *Land & C4I Ltd. v. Hughes Network Sys., LLC*, 927 F.3d 1292, 1301 (Fed. Cir. 2019). In *Bio-Rad*,
 14 the expert had “claimed that his 15% royalty rate was already apportioned in the comparable
 15 licenses, but failed to provide any numerical value to support his analysis.” *Bio-Rad Lab ’ys, Inc. v.*
 16 *10X Genomics Inc.*, 967 F.3d 1353, 1376 (Fed. Cir. 2020). The Court commented that that case was
 17 “not a case in which an unsupported conclusory opinion leaves the jury with nothing but
 18 speculation.” *Id.* at 1377. Unlike *Elbit* and *Bio-Rad*, Mr. Hansen did not discuss whether
 19 apportionment has already been accounted for in the Asetek-Corsair license. And in *Vectura*, the
 20 license relied on was a license between the same parties that the accused infringer’s expert admitted
 21 was “a very close comparable.” *Vectura Ltd. v. Glaxosmithkline LLC*, 981 F.3d 1030, 1040 (Fed.
 22 Cir. 2020). The Federal Circuit commented that the damages theories presented “a rather unusual
 23 circumstance.” *Id.* at 1040. The Court also referred to the comparability analysis—which Mr.
 24 Hansen did not do—as “critical to any built-in apportionment theory.” *Id.* at 1044. The analysis in
 25 Mr. Hansen’s report does not fit into these cases.

26 Finally, CoolIT also relies on a District of Delaware decision in *Bio-Rad Laboratories, Inc. v.*
 27 *10X Genomics, Inc.*, for the proposition that “using ‘comparable licenses to establish a reasonable
 28 royalty rate, without performing a separate apportionment analysis, where there is a logical basis for

doing so' is specifically permitted." Dkt. 417-3 at 1 (quoting *Bio-Rad Lab'ys, Inc. v. 10X Genomics, Inc.*, Case No. CV 15-152-RGA, 2018 WL 4691047, at *7 (D. Del. Sept. 28, 2018)). Rather than support CoolIT, this case shows why Mr. Hansen's analysis should be excluded. The judge in *Bio-Rad* excluded the expert for failing to account for apportionment. *Id.* at *8. The judge was "dubious" of the expert's analysis because it had simply stated that apportionment would have been considered by the parties to the agreement and had largely already been taken into consideration. *Id.* The judge concluded that allowing the expert's "cursory analysis to circumvent the apportionment requirement would effectively gut the doctrine." *Id.* (noting "[t]he Federal Circuit has repeatedly emphasized the importance of apportionment as part of a district court's gatekeeping function.") At least the expert in *Bio-Rad* had a cursory statement suggesting that apportionment was accounted for in the license he relied on. Mr. Hansen has not even done that.

5. CoolIT ignores the Federal Circuit's recognition that damages analyses based on the entire market value of an accused product can lead to improper damages awards by juries.

Ultimately, Mr. Hansen's failure to apportion and his use of the entire market value of the accused Asetek products raises the very real risk of an improper damages award from the jury, as repeatedly recognized by the Federal Circuit. The Federal Circuit has warned that "calculating reasonable royalty damages by using the revenue of the entire product as a royalty base 'carries a considerable risk that the patentee will be improperly compensated for non-infringing components of that product.'" *LaserDynamics*, 694 F.3d at 67 (vacating a damages verdict because the expert improperly used the entire market value for a royalty base in calculating damages). The Federal Circuit has also noted that the improper use of the entire market value skews the damages horizon for the jury. *See LaserDynamics*, 694 F.3d at 67-68; *Uniloc USA, Inc. v. Microsoft Corp.*, 632 F.3d 1292, 1320 (Fed. Cir. 2011). Nowhere in its opposition does CoolIT even attempt to address these concerns.⁴

⁴In its motion, Asetek suggested the Court could correct Mr. Hansen's analysis by using Mr. Hansen's own opinion that [REDACTED] *Id.*, ¶ 93. There is nothing erroneous with this suggestion. Clearly, this approach is supported by the principle of limiting the royalty base to the SSPPU described in *Virnetx* and *LaserDynamics*.

At bottom, Mr. Hansen’s analysis is unreliable. He did not apportion the royalty base. He did not apportion the royalty rate (and instead applied the same rate from the Asetek-Corsair license). CoolIT’s attorneys argue his analysis was acceptable because of “built-in apportionment” and use of a “base line comparable” license, but those arguments are both incorrect and not supported by Mr. Hansen’s report. The Court should exercise its gatekeeping authority to “ensure that only theories comporting with settled principles of apportionment [are] allowed to reach the jury.” *Virnetx, Inc. v. Cisco Sys., Inc.*, 767 F.3d 1308, 1328 (Fed. Cir. 2014). Mr. Hansen’s opinions should be excluded.

B. Mr. Hansen’s Royalty Base Improperly Includes a Portion of Overseas Sales to Corsair and He Did Not Ask Corsair for Data to Support His Analysis, Which Data Corsair Has

In its motion, Asetek argued that the Court should not allow Mr. Hansen to present speculation and guesswork to the jury about alleged additional sales when Mr. Hansen and CoolIT failed to obtain actual data from Corsair that exists. Asetek explained that the Federal Circuit rejects damages awards that are based on speculation and guesswork and CoolIT does not disagree. Asetek provided examples of district court decisions limiting damages analysis where the patentee did not obtain information the necessary information in discovery. CoolIT did not respond to those cases. The Court should exclude Mr. Hansen’s opinions speculating as to alleged “additional sales” for all of the reasons explained in Asetek’s motion. *See* Dkt. 404-3, Section III.E.

CoolIT attempts to excuse the clear shortcomings of Mr. Hansen’s analysis by arguing that “direct data of these downstream sales was not available to Mr. Hansen,” (Dkt. 417-3 at 14), but that is factually incorrect. To determine how many Asetek products Corsair sold in the United States, Mr. Hansen simply had to ask Corsair, a party on whose behalf he is testifying. Corsair’s sales data provides the U.S. shipping locations for its products. Smyth Decl., ¶ 5. And Mr. Hansen knows this because he considered Corsair’s U.S. sales of the accused CoolIT products. Smyth Decl., ¶ 6. His rebuttal report included over 2,000 pages of exhibits in which he filtered the Corsair U.S. sales data in various ways. *Id.* Mr. Hansen was able to consider this data in his rebuttal report because Asetek requested it in discovery. Smyth Decl., ¶ 5. CoolIT and Mr. Hansen failed to request or obtain equivalent data for the accused Asetek products.

Further, in its opposition, CoolIT misleadingly cites to Mr. Hansen’s testimony that “his recollection was that Corsair did not have complete information where its customers ultimately sell and use all of their products.” Dkt. 417-3 at 15, n.9. The relevant question, of course, is not what Corsair’s *customers* do with the products once purchased. The relevant question is where *Corsair itself* has sold and shipped the products purchased from Asetek and/or what percentage of Asetek products bought by Corsair outside the U.S, and then Corsair has resold in the U.S. [REDACTED]

CoolIT argues that Mr. Hansen’s reliance on the SEC filings was proper and that “there is no reason to believe that the geographic breakdown for liquid cooling systems would be any different than the overall product mix.” Dkt. 417-3 at 15. The issue is that there is no reason to believe the geographic breakdown for liquid cooling products is *the same* as the overall product mix. And that is because [REDACTED]

[REDACTED] Asetek produced data showing a substantial number of sales to Corsair that are shipped directly to the United States.⁵ Mr. Hansen’s assumption that this data is incomplete and/or that Corsair ships additional accused liquid cooling products into the United States has no basis and should be excluded as unreliable.

C. CoolIT Cannot Overcome the Statutory Limitation on Damages by Relying on the Relation Back Doctrine

CoolIT seeks to rely on the “relation back” doctrine to extend its damages recoverable against Asetek USA beyond the six-year limitation, but the relation back doctrine should not apply here. Asetek USA did not know “the action would have been brought against it, but for a mistake concerning the proper party’s identity.” Fed. R. Civ. P 15(c)(1)(C)(ii) (emphasis added). This is an express requirement of Rule 15 that CoolIT fails to establish.

CoolIT’s argument to the contrary focuses on what *CoolIT* allegedly knew when it filed its Complaint. But CoolIT itself admits that “Rule 15(c)(1)(C)(ii) asks what the prospective defendant

⁵ CoolIT attempts to paint Mr. Hansen’s mathematical gymnastics as an attempt by Mr. Hansen to act “conservatively” and ensure that the U.S. revenues are not double counted. Dkt. 417-3 at 15. The problem with Mr. Hansen’s method is not that he is removing the confirmed U.S. sales to avoid double counting; the problem is with his unsupported assumption that 35% of Asetek’s products sold to Corsair land in the United States.

1 knew or should have known during the Rule 4(m) period, *not what the plaintiff knew or should*
 2 *have known* at the time of filing [the] original complaint.” (Dkt. 417-3 at 16 (quoting *Krupski v.*
 3 *Costa Crociere S.p.A.*, 560 U.S. 538, 548 (2010) (emphasis added)). The Court’s previous finding
 4 regarding what *CoolIT* was aware of is immaterial.⁶

5 Moreover, as explained in Asetek USA’s opposition to CoolIT’s motion to amend, CoolIT in
 6 fact knew of Asetek USA’s involvement in sales in September 2014. At the pretrial conference in
 7 the previous litigation, Asetek’s and CoolIT’s counsel discussed that Asetek Danmark A/S and
 8 Asetek USA Inc. are separate entities that both sell liquid cooling products. Dkt. 316-2, ¶ 8. At
 9 CoolIT’s counsel’s request, trial was delayed and Asetek provided discovery on the sales made by
 10 Asetek USA. Dkt. 316-3 at 14:3-24; Dkt. 316-2, ¶ 8; Dkts. 316-4, 316-5, 316-6. So, when CoolIT
 11 sued Asetek A/S in this case, Asetek USA had no reason to think CoolIT and its counsel had
 12 forgotten about these significant events and/or was mistaken about the identity of the proper parties.

13 CoolIT relies on *SMIC*, but that case is easily distinguished because the court found “the
 14 relation back inquiry unnecessary.” *SMIC, Americas v. Innovative Foundry Techs. LLC*, 473 F.
 15 Supp. 3d 1021, 1025 (N.D. Cal. 2020). The Rule 15 commentary in that case was not only *dicta*, but
 16 also distinguishable from the present case because the original complaint in *SMIC* expressly alleged
 17 infringement “through the activities of [the] subsidiaries” (*Id.*), whereas CoolIT’s counterclaims in
 18 this case did not (Dkt. 23). Instead, when viewed from Asetek USA’s perspective, CoolIT’s failure
 19 to name Asetek USA “was the result of a fully informed decision as opposed to a mistake
 20 concerning the proper defendant’s identity.” *See Krupski*, 560 U.S. at 552. Thus, the requirements of
 21 Rule 15(c)(1)(C)(ii) are not met.

22 **III. CONCLUSION**

23 For the reasons outlined above, the Court should exclude Mr. Hansen’s unreliable opinions
 24 regarding CoolIT’s damages. Asetek respectfully requests that its motion be granted.

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 26
 27 ⁶ CoolIT crops the Court’s finding to omit the fact that the CoolIT was aware of the existence
 28 of Asetek USA. Dkt. 417-3 at 16. The Court’s complete finding stated as follows: Although *CoolIT*
was aware of the existence of the Asetek Danmark’s related entities, CoolIT was not aware that
 such entities made U.S. sales of the products accused in this litigation.” Dkt. 322 (emphasis added).

1 Dated: April 21, 2022

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2
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